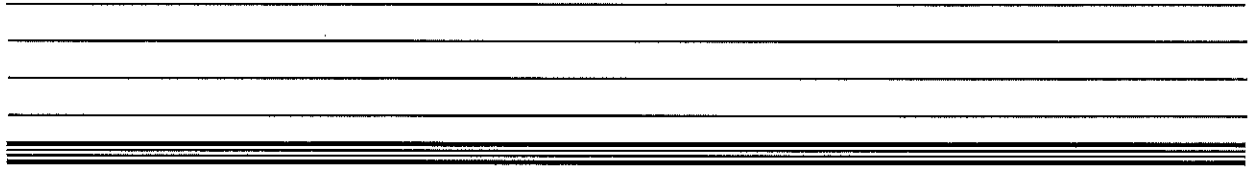


Oversight Division

Committee On Legislative Research

SUNSET REVIEW

SURVIVING SPOUSE TAX CREDIT



Sunset Review

SURVIVING SPOUSE TAX CREDIT

*Prepared for the Committee on Legislative Research
by the Oversight Division*

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Committee on Legislative Research Oversight Subcommittee

THE COMMITTEE ON LEGISLATIVE RESEARCH, Oversight Division, is an agency of the Missouri General Assembly as established in Chapter 23 of the Revised Statutes of Missouri. The programs and activities of the State of Missouri cost approximately \$24.0 billion annually. Each year the General Assembly enacts laws which add to, delete or change these programs. To meet the demands for more responsive and cost effective state government, legislators need to receive information regarding the status of the programs which they have created and the expenditure of funds which they have authorized. The work of the Oversight Division provides the General Assembly with a means to evaluate state agencies and state programs.

THE COMMITTEE ON LEGISLATIVE RESEARCH is a permanent joint committee of the Missouri General Assembly comprised of the chairman of the Senate Appropriations Committee and nine other members of the Senate and the chairman of the House Budget Committee and nine other members of the House of Representatives. The Senate members are appointed by the President Pro Tem of the Senate and the House members are appointed by the Speaker of the House of Representatives. No more than six members from the House and six members from the Senate may be of the same political party.

Sunset reviews are assigned to the Oversight Division pursuant to Sections 23.250 to 23.298. After August 28, 2003, any new program authorized by the General Assembly shall sunset not more than six years after its effective date unless reauthorized by the General Assembly. The Oversight Division shall conduct a performance evaluation of the program as set forth in statute and prepare a written report. The report shall make recommendations on the sunset, continuation, or reorganization of a program.

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**COMMITTEE ON LEGISLATIVE RESEARCH
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Members of the General Assembly:

The Joint Committee on Legislative Research is required by Section 23.259.1(3), RSMo to conduct performance evaluations of sunset programs to determine and evaluate program performance in accordance with program objectives, responsibilities, and duties as set forth by statute or regulation. The Oversight Division has reviewed the following programs:

- Surviving Spouse Tax Credit;
- Film Production Tax Credit;
- New Markets Tax Credit;
- After School Retreat Reading and Assessment Check Off;
- Missouri Teaching Fellows; and
- Healthcare Access Fund Tax Credit

The approved reports include Oversight's comments on (1) the sunset, continuation, or reorganization of the program, and on the need for the performance of the functions of the program; (2) the duplication of program functions; (3) the appropriation levels for each program for which sunset or reorganization is recommended; and possibly (4) drafts of legislation necessary to carry out the committee's recommendations pursuant to (1) and (2) above.

We hope this information is helpful and can be used in a constructive manner for the betterment of the state program to which it relates. You may obtain a copy of the reports from the Oversight Division website at <http://www.moga.mo.gov/htmlpages/losunsetreview.html>.

Respectfully,


Senator Brad Lager
Chairman

Chapter 1

Purpose/Objectives

The General Assembly has provided by law that the Joint Committee on Legislative Research will conduct a performance evaluation of a program subject to the Missouri Sunset Act. The committee shall consider the criteria as listed in Section 23.268, RSMo in determining whether a public need exists for the continuation of a program, or for the performance of the functions of the program. A sunset review is the regular assessment of the continuing need for a state program to exist. A sunset review answers the basic questions of what has happened to this program since its inception and does the State of Missouri continue to “need” the services provided by the program.

The Joint Committee on Legislative Research directed the Oversight Division to conduct a Sunset Review of the Missouri Department of Revenue’s Public Safety Officer Surviving Spouse Tax Credit program, Section 135.090, RSMo. This report provides a status on the Public Safety Officer Surviving Spouse Tax Credit Program as created by Conference Committee Substitute for House Committee Substitute for Senate Bill 30 in the 2007 legislative session and fulfills the requirement as established by Section 23.268, RSMo.

The Oversight Division review addressed, but was not limited to the following:

1. Compiling and reviewing data related to the program since its inception.
2. Analyzing related events and changes to the program since its inception in 2007.

Scope

The Oversight Division obtained information on the Public Safety Officer Surviving Spouse Tax Credit Program from 2007 through 2012. The Oversight Division analysis was limited to a review of data reported by the Department of Revenue for the program.

The Department of Revenue has interpreted Section 32.057, RSMo, to prohibit the Department from disclosing detailed information about the program. Under this interpretation of that statute section, the Department of Revenue declined to provide Oversight Division with any information regarding individual claimants or claims processed.

Methodology

The Oversight Division obtained information on the Public Safety Officer Surviving Spouse Tax Credit Program through review of statutes, letter correspondence with the Missouri Department of Revenue (DOR), and interviews with DOR staff who work directly with the program.

Background

Conference Committee Substitute for House Committee Substitute for Senate Bill 30 from the 2007 legislative session created the Public Safety Officer Surviving Spouse Tax Credit in Section 135.090 RSMo. The program allows the surviving spouse of a qualified public safety officer who was killed in the line of duty to claim a refundable tax credit equal to the amount of property taxes paid by the surviving spouse on the surviving spouse's homestead.

The provisions in Section 135.090 RSMo included an automatic sunset six years from their effective date; the program will sunset on August 28, 2013, unless the program is reauthorized by an act of the General Assembly. No changes have been made to the sunset language of this section of statute after the enabling legislation was passed; therefore, the provisions are scheduled to expire on August 28, 2013.

Department of Revenue

The Missouri Department of Revenue (DOR) serves as the central collection agency for the state. The Department's primary duties also include motor vehicle titling and registration, and issuing driver licenses. DOR administers the Surviving Spouse Tax Credit and a number of other tax credit programs which are claimed directly on a taxpayer's filed return. DOR also redeems tax credits administered by other state agencies when they are submitted in lieu of payments by Missouri taxpayers.

Chapter 2

Comments

This program allows the surviving spouse of a public safety officer to claim a tax credit against individual income taxes imposed by Chapter 143, in an amount equal to the property taxes paid on the surviving spouse's homestead. The surviving spouse may continue to claim the credit until such time as the surviving spouse remarries. The tax credit is refundable; if the tax credit amount exceeds the amount of tax due from the surviving spouse, the excess will be refunded. There is no cap on this program.

Section 135.090, RSMo, defines an eligible public safety officer as "any firefighter, police officer, capitol police officer, parole officer, probation officer, correctional employee, water patrol officer, park ranger, conservation officer, commercial motor enforcement officer, emergency medical technician, first responder, or highway patrolman employed by the state of Missouri or a political subdivision thereof who is killed in the line of duty, unless the death was the result of the officer's own misconduct, or abuse of alcohol or drugs."

Individuals claiming the credit must complete the Miscellaneous Income Tax Credits form (MO-TC) and the Public Safety Officer Surviving Spouse Credit form (MO-SSC), and attach those forms and a copy of their paid property tax receipt to their individual income tax return. If the homestead includes more than five acres, only a part of the property tax paid is eligible for the tax credit and an Assessor Certification (FORM 948) must be attached to document the applicable percentage.

Claim Processing

Officials from the Department of Revenue (DOR) informed us that DOR employees perform a manual review of each claim submitted.

- In the initial year of the claim, the surviving spouse is permitted to file a Married Filing Combined return with their deceased spouse. The technician reviewing the claim would ensure the "deceased" indicator is checked on the return, and would review the information on the Form W-2 to verify the deceased individual was employed by the state of Missouri or a political subdivision in Missouri. The DOR technician may also use the Employment Security System to verify employment.

- If a property tax receipt is not included, the technician would request the claimant provide a copy of the receipt, and may also research the county collector's website to verify property taxes paid. The technician would ask the claimant to supply additional documentation to substantiate the claim if any required information cannot be verified.
- In subsequent years, the technician would review the claim to ensure that all of the required forms are attached to form MO-1040. The technician would also verify the claimant received the credit in the preceding year. If the surviving spouse files a return indicating a married status in a subsequent year, the credit would not be allowed.
- If the Department determines that the claim was filed incorrectly, the Department would adjust the taxpayer's return and bill the taxpayer for any underpayment.
- DOR officials advised us that they had denied only two claims since the program began; in both cases the claim was denied because the filer did not qualify for the credit.

Program Activity

The Department of Revenue has interpreted Section 32.057, RSMo, to prohibit the Department from disclosing specific account detail about who has claimed the credit. Under this interpretation of that statute section, the Department of Revenue declined to provide Oversight Division with any detailed information regarding individual claimants or claims processed. However, the Department was able to provide the following chart regarding the amount of the redemptions of the credit for each fiscal year.

YEAR	CLAIMS FILED	CREDITS REDEEMED
FY 2009	fewer than 7	\$9,583
FY 2010	12	\$22,363
FY 2011	11	\$16,861
FY 2012	14	\$32,793*
TOTAL	fewer than 44	\$81,600

- * Department of Revenue officials indicated they do not notify individuals or industry groups about the existence of this tax credit program, although they provide information on their website about the tax credit, who qualifies, and how to apply.

OVERSIGHT DIVISION
Sunset Review
Surviving Spouse Tax Credit

- * DOR officials also stated they do not have any information which would allow them to estimate the cost of this program in any given year.
- * DOR officials stated that they do not investigate or review to determine whether the deceased held a qualifying job title, or whether the deceased died in the line of duty and not as a result of misconduct.

Oversight reviewed the Law Enforcement Officer Memorial and the Fire Association Memorial and determined the following number of Public Safety Officers who died in the line of duty each of the following calendar years:

CALENDER YEAR	LAW ENFORCEMENT	FIRE FIGHTERS
CY 2007	6	0
CY 2008	6	7
CY 2009	2	3
CY 2010	5	2
CY 2011	6	3
CY 2012	N/A	NA

* Information for 2012 was not available

Although Oversight was not able to perform any detailed review of claims, we received information from Department of Public Safety and from the Department of Labor and Industrial Relations which is consistent with the number of claims reported by the Department of Revenue. Oversight also notes that once a surviving spouse claims this credit they remain eligible for the credit until they are remarried. Therefore, redemptions may or may not be expected to grow over time due to claimants' filing status.

Finally, Oversight notes that the Department of Revenue has not established any regulations for this program, and stated that they have not asked for any statutory changes nor do they believe the program would need any changes if it is extended.

As we noted above, the Department of Revenue did not provide us any detailed information about individual claimants or claims, and declined to allow us to review or test claim files. If Oversight had been allowed to review individual claim documents, additional comments might have been made regarding the program.

Benefits Available under the Workers' Compensation Program

Oversight has reviewed the provisions of the Missouri Workers' Compensation program, and we noted that the family or estate of a deceased public safety officer as defined in the Surviving Spouse Tax Credit program would appear to be eligible for Workers' Compensation death benefits, and a special Line of Duty Death Benefit.

- * The amount of a Workers' Compensation death benefit is calculated using a formula in the Workers' Compensation program law. The spouse benefit continues until the surviving spouse remarries, and benefits to other dependents of a public safety officer would be continued until the dependent no longer qualifies under the Workers' Compensation program law.
- * The Line of Duty Compensation program was created in 2009 as Section 287.243 RSMo by Senate Committee Substitute for House Committee Substitute for HB 580. In this program, the estate of a law enforcement officer, emergency medical technician, air ambulance pilot, air ambulance registered professional nurse, or firefighter who was killed in the line of duty may claim a one-time \$25,000 benefit payment from the Missouri Department of Labor and Industrial Relations, Division of Workers' Compensation.

Oversight notes that benefits from the Workers' Compensation program would be available to the same individuals who are eligible for the Surviving Spouse Tax Credit Program and Workers' Compensations benefit would be larger than benefits available from the Surviving Spouse Tax Credit Program.